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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/801,769

03/16/2004

Darryl L. Schmitz

8929/3049

3138

34205

7590

06/21/2005

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MINNEAPOLIS, MN 55402

EXAMINER

MAYO, TARA L

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,769

Applicant(s)

SCHMITZ ET AL.

Examiner

Tara L. Mayo

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7,9 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,7,9 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings were received on 17 March 2005. These drawings are accepted.

Claim Objections

2. The prior objections to the claims have been overcome by the response filed 17 March 2005.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 17 through 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Specification as originally filed fails to provide support for a method of creating an uninterrupted sleeping surface with two bladders "capable of being folded into a sleeper sofa."

Claim Rejections - 35 USC § 103

5. Claims 1, 4, 5, 6, 7, 9 and 17 through 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepherd (U.S. Patent No. 195,850).

Shepherd '850, as seen in Figures 1 and 2, shows a sleep surface comprising:
with regard to claim 1,

a first section (A) having a longitudinal side including a first upper lip (E) and a first lower lip (G'), each of said first upper and lower lips having an inner surface and an outer surface, said upper and lower lips defining a receiving channel therethrough;

a second section (C) having a longitudinal side including a second upper lip (upper rim) and a second lower lip (lower rim), each of said second upper and lower lips having an inner surface and an outer, said second upper lip and said second lower lip received into said receiving channel, wherein the outer surface of said second upper lip abuts the inner surface of said first upper lip and the outer surface of said second lower lip abuts the inner surface of said first lower lip forming an overlap between the first section and the second section, wherein said longitudinal side of said second section is attached to the longitudinal side of the first section; and further wherein

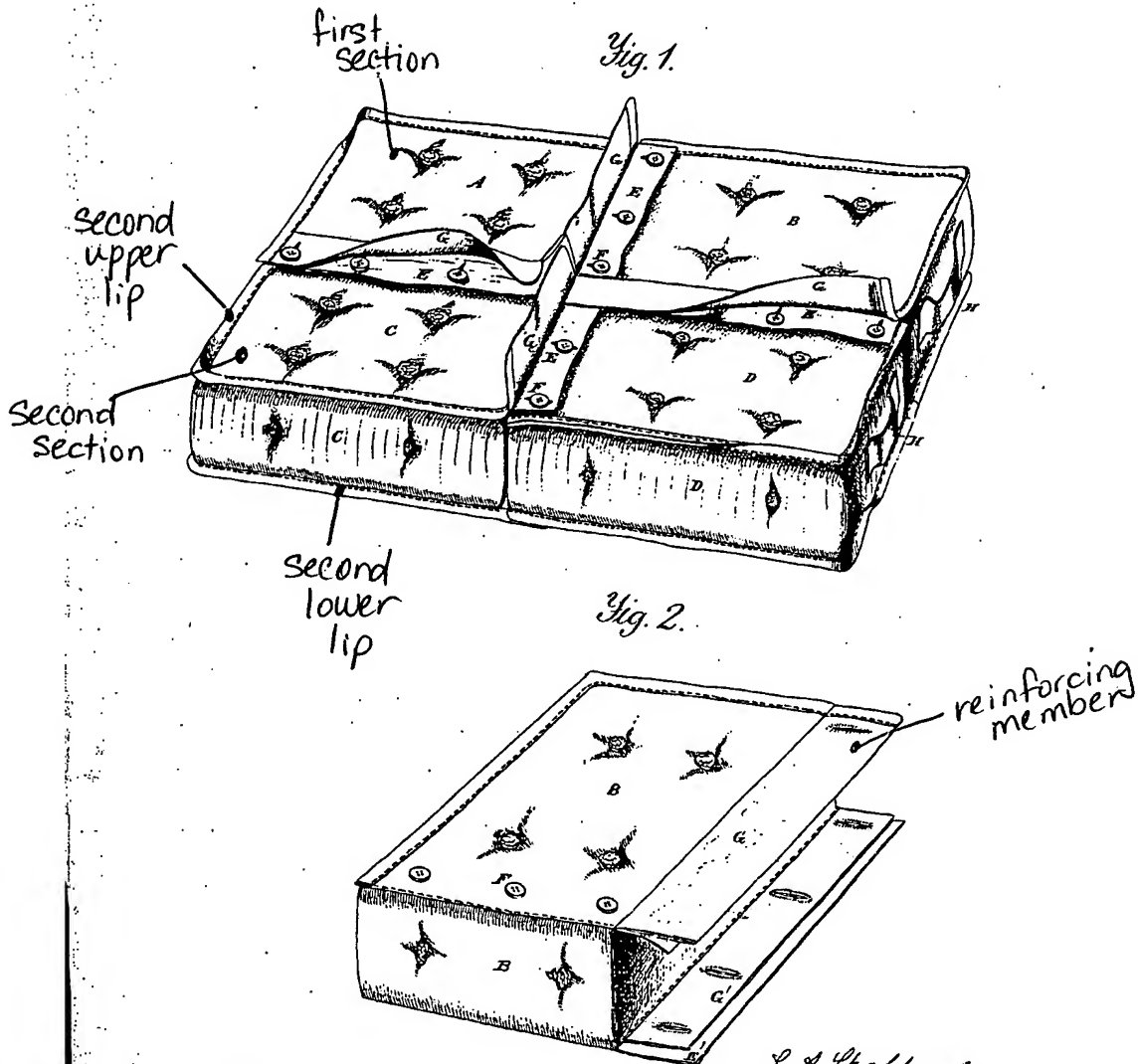
each section is constructed and arranged to maintain an air pressure therein that is independent of an air pressure in the other section; and
with regard to claim 9,

further comprising a reinforcing member (G) operably attached to the first and second sections over the overlap.

S. A. SHEPHERD.
MATTRESSES.

No. 195,850.

Patented Oct. 2, 1877



Witnesses:
A. Ruppert,
H. W. Mendenhall.

S. A. Shepherd,
Inventor:
D. P. Holloway & Co.
Atty

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Shepherd '850 fails to teach:

the first and second sections being bladders;

the longitudinal side of the first bladder being heat welded to the longitudinal side of the second bladder; and

the longitudinal side of the second bladder being attached to the longitudinal side of the first bladder with a hook and loop fastener, a zipper or a plurality of snaps.

With regard to claim 1, it would have been obvious to one having ordinary skill in the art of beds at the time the invention was made to modify the device shown by Shepherd '850 by substituting bladders for the first and second sections since the Examiner takes Official Notice of the functional equivalence of bladders and mattresses as sleep surfaces.

With regard to claim 4, it would have been obvious to one having ordinary skill in the art of beds at the time the invention was made to modify the device shown by Shepherd '850 such that the longitudinal side of the first bladder would be heat welded to the longitudinal side of the second bladder. The motivation would have been to permanently secure the first and second bladders to one another.

With regard to claims 5 through 7, it would have been obvious to one having ordinary skill in the art of beds at the time the invention was made to modify the device shown by Shepherd '850 such that the longitudinal side of the second bladder would be attached to the longitudinal side of the first bladder with a hook and loop fastener, a zipper or a plurality of snaps instead of buttons. The motivation would have been to releasably secure the first and second bladders to one another with equivalent means.

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With regard to claims 17 through 20, the method steps recited therein are inherent to the use of the device shown by Shepherd '850 and as modified above.

Response to Arguments

6. Applicant's arguments with respect to claims 1 and 17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tlm
14 June 2005



Thomas B. Will
Supervisory Patent Examiner
Group 3600